VJH

265 NLRB No. 177

D--9605
Kenosha and
Milwaukee, WI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

F. LANDON CARTAGE CO. (CARTAGE CO.), LANDON TRUCK LEASING LIMITED (LEASING LIMITED), LONDON TRUCK LEASING COMPANY (LEASING CO.), F. LANDON TRUCKING COMPANY (TRUCKING CO.), METEOR LINES LIMITED (METEOR), A & M AGRICULTURAL COOPERATIVE d/b/a A & M FARM LINES (A & M), ALTER EGOS, SINGLE AND/OR SUCCESSOR EMPLOYERS[1]

and

Case 30--CA--6471

LOCAL 43 AND LOCAL 200, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION AND ORDER

Upon an original charge, a first amended charge, and a second amended charge filed on April 30, May 15, and June 25, 1981,[2] respectively, by Local 43 and Local 200, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Locals 43 and 200 or Unions, and duly

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[1] Herein collectively referred to as Respondents.
[2] All dates hereinafter refer to 1981, unless otherwise indicated.

served on Respondents, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 30, issued a complaint [3] and notice of hearing on July 29, against Respondents, alleging that Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1), (3), (5), and 8(d), and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, amended charges, and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondents failed to file an answer to the complaint.

With respect to the unfair labor practices, the complaint alleges in substance that Respondents violated Sections 8(a)(1), (3), (5), and 8(d) by soliciting employees to abandon the Unions, threatening plant closure, unilaterally closing the Kenosha and Milwaukee, Wisconsin, facilities, terminating the employees, and abrogating their labor agreements with the Unions.

On December 7, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment based on Respondents' failure to file an answer as required by Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended. Subsequently, on December 11, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondents did not

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[3] Gertsen Trucking Company was named in the complaint as a party in interest.

file a response to the Notice To Show Cause and, accordingly, the allegations of the complaint stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing issued on July 29 specifically states that unless an answer was filed within 10 days from the service thereof, ''all of the allegations of the Complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' The General Counsel further submitted, as recited in the Board's Notice To Show Cause, that each Respondent was notified of its failure to file an answer to the complaint as required, and that summary judgment would be sought unless such an answer was filed.

On April 16, 1982, the Board issued an Order reopening the record and requesting specific statements of position from the parties regarding the appropriate remedy and granting Respondents additional time to respond to the Notice to Show Cause. On May 3 and 11, 1982, the General Counsel and the Charging Parties, respectively, filed statements of position. There was no response from Respondents.

As noted above, Respondents have not filed an answer to the complaint, nor did Respondents respond to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondents

At all times material herein, and continuing, the following situation appertains: Cartage Co., Leasing Co., Trucking Co., and Meteor are Illinois corporations; Leasing Limited is a Wisconsin corporation; and A & M is a Texas corporation.

All of the above enterprises, individually and/or collectively, maintain offices and places of business in Chicago, Rockford, and Bensenville, Illinois, and Kenosha and Milwaukee, Wisconsin, where they have been and/or are engaged in the intra-

and interstate hauling of freight, and the leasing of real estate and tractors and trailers.

At all times material herein, Leasing Limited, Leasing Co., Trucking Co., Meteor, and A & M were established by Cartage Co. as subordinate instruments of and disguised continuations of Cartage Co., and/or were preexisting affiliate ventures. All of the above are affiliated businesses with common agents, officers, and directorates, and shared property. Common management has set uniform and common control of labor relations policies, has interchanged personnel, and Respondents have held themselves out to the public as a single integrated business enterprise by common advertising, telephones, and applications for state and Federal operating authority.

By virtue of the above, Respondents are alter egos, a single employer, and/or successors, and constitute a single integrated business and employer within the meaning of the Act. Annually, in the course and conduct of their operations, Respondents have derived gross revenues in excess of $50,000 for the interstate transportation of freight among the several States. On the basis of the foregoing we find that Respondents are, and have been at all times material herein, a single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organizations Involved

Locals 43 and 200 are labor organizations within the meaning of Act.

III. The Unfair Labor Practices

For approximately 20 years Locals 43 and 200 have been the exclusive collective-bargaining representatives of Respondents' truckdrivers, terminal employees, and group leaders at Kenosha and Milwaukee, Wisconsin, respectively, and have enjoyed continuous contractual relationships. We find that the aforementioned employees constitute units appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

The most recent collective-bargaining agreements of the parties were from April 1, 1979, until March 31, 1982.

On or about April 21, Respondents solicited employees at Kenosha to abandon Local 43 and become independent contractors, and threatened that Respondents would close the facility if they refused. When the employees refused, Respondents, on April 24, unilaterally and without notice to or bargaining with Local 43 as to the action or effects closed the Kenosha facility and terminated the employees. Respondents continue to service their customers by utilizing their alter egos and Chicago, Illinois, employees and equipment.

On May 5, Respondents solicited the employees at Milwaukee to abandon Local 200 and become independent contractors, and threatened that Respondents would close the facility if they refused. When these employees refused, Respondents, on May 6, unilaterally and without notice to or bargaining with Local 200 as to the action or effects closed that facility and terminated the employees. Here, too, Respondents have continued to serve

their customers by utilizing their alter egos and Chicago, Illinois, employees and equipment.

At both the Kenosha and Milwaukee facilities, Respondents abrogated their labor agreements with Locals 43 and 200. They refused to abide by the contract terms and have refused to bargain with the Union on any or all matters constituting mandatory subjects of bargaining.

On the basis of the foregoing, we find that by soliciting employees to abandon their collective-bargaining representatives, threatening them with plant closure if they refused to do so, unilaterally closing facilities and terminating those employees, while continuing to service customers by utilizing alter egos, abrogating the collective-bargaining agreements with the Unions, and refusing to bargain, Respondents have violated Section 8(a)(1), (3), (5), and (d) of the Act.

IV. The Effects of the Unfair Labor Practices Upon Commerce

The activities of Respondents set forth in section III, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondents have engaged in certain unfair labor practices, we shall order Respondents to cease and desist therefrom and take certain affirmative action which we find necessary to effectuate the policies of the Act.

A. Kenosha Employees

With regard to the Kenosha terminal, the record reveals that, on May 4, Gertsen Trucking Company, an Illinois corporation, sharing common officers and directors with Respondents, succeeded to that facility, and has since entered into a collective-bargaining relationship with Local 43 for the Kenosha employees. The General Counsel and the Charging Parties do not seek any remedy against Gertsen, which as noted in footnote 3, supra, is described in the complaint as a ''party in interest.'' Nor do they request that Respondents be ordered to resume operations at Kenosha. Under all the circumstances, we shall not order Respondents to reopen the Kenosha terminal and we find that the following remedies will best effectuate the policies of the Act:

As to employees hired by Gertsen, Respondents shall make them whole for any loss of earnings and other benefits they may have suffered by reason of the discrimination practiced against them.

As to employees who have not been hired by Gertsen, Respondents shall offer them immediate and full reinstatement to to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, at the facility performing the work previously performed at Kenosha, discharging, if necessary, any employee hired to perform such work. As to those employees who accepted the offers, Respondents shall make them whole for any loss of earnings and other benefits they may

have suffered by reason of the discrimination practiced against them, and shall pay such employees the expenses entailed in traveling and moving their families and household effects to such location.[4] As to those employees who are unable to accept offers of reinstatement because of the distances involved, Respondents shall make them whole for any loss of earnings and other benefits they may have suffered by reason of the discrimination practiced against them, with backpay to continue until such time as each secures, or did secure, substantially equivalent employment with other employers.

All backpay shall be computed in the manner set forth in F. W. Woolworth Company, 90 NLRB 289 (1950), with interest computed in the manner set forth in Florida Steel Company, 231 NLRB 651 (1977). See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

In addition, Respondents shall be ordered to make whole its employees by making the fringe benefit fund payments required by the collective-bargaining agreement [5] and by reimbursing its employees for any expenses ensuing from Respondents' unlawful failure to make such required payments, as set forth in Kraft

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[4] Bermuda Knitwear Corporation, 120 NLRB 332 (1958).

[5] Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether Respondents must pay any additional amounts (continued)

Plumbing & Heating, Inc., 252 NLRB 891, fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). With regard to each former Kenosha employee, Respondents' obligation in this regard shall continue until: (1) Gertsen commences making fringe benefit fund payments; (2) an offer of reinstatement by Respondents is accepted; (3) substantially equivalent employment with another employer is secured; or (4) Respondents negotiate in good faith to impasse or agreement with Local 43. All payments to employees shall be with interest as set forth in Florida Steel, supra.

B. Milwaukee Employees

Having found that Respondents unlawfully shut down the Milwaukee facility and terminated those employees in violation of Section 8(a)(1), (3), and (5) of the Act, we shall order Respondents to restore the status quo ante by reopening the Milwaukee facility and restoring the work of unit employees. Respondents shall recall the terminated employees and offer to reinstate them to the positions they held before their unlawful terminations, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their

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[5] into the benefit funds in order to satisfy our ''make-whole'' remedy. These additional amounts may be determined, depending upon circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. Merryweather Optical Company, 240 NLRB 1213 (1979).

seniority and other rights and privileges. Respondents shall make them whole for any loss of earnings and other benefits resulting from their unlawful termination. Backpay shall be computed in accordance with the formula stated in F. W. Woolworth Company, supra, with interest computed in the manner set forth in Florida Steel, supra.

In addition, Respondents shall make whole its Milwaukee employees by making the fringe benefit fund payments required by the collective-bargaining agreement [6] and by reimbursing its employees for any expenses ensuing from Respondents' unlawful failure to make such required payments as set forth in Kraft Plumbing, supra. All payments to employees shall be with interest as set forth in Florida Steel, supra.

Conclusions of Law

1. F. Landon Cartage Co. (Cartage Co.), Landon Truck Leasing Limited (Leasing Limited), Landon Truck Leasing Company (Leasing Co.), F. Landon Trucking Company (Trucking Co.), Meteor Lines Limited (Meteor), and A & M Agricultural Cooperative d/b/a A & M Farm Lines (A & M) constitute a single employer engaged in commerce within the meaning of the Act.

2. Local 43 and Local 200, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations within the meaning of Section 2(5) of the Act.

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[6] See fn. 5, supra.

3. All truckdrivers, terminal employees, and group leaders who have been covered by collective-bargaining agreements between Respondents and the Unions at Respondents' Kenosha and Milwaukee facilities constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By soliciting employees to abandon the Unions and threatening them with plant closure, the Respondents have violated Section 8(a)(1) of the Act.

5. By unilaterally closing the Kenosha and Milwaukee facilities and terminating the employees without bargaining with the Unions about the closing and its effects on the said employees, while continuing to serve their customers by utilizing alter egos, by abrogating their contracts with the Unions, and by refusing to bargain with the Unions about mandatory subjects of bargaining, Respondents violated Section 8(a)(1), (3), (5) and (d) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents F. Landon Cartage Co. (Cartage Co.), Landon Truck Leasing Limited (Leasing Limited), Landon Truck Leasing Company (Leasing Co.), F. Landon Trucking Company (Trucking Co.), Meteor Lines Limited (Meteor), A & M Agricultural Cooperative d/b/a A & M Farm Lines (A & M), alter egos, single and/or successor employers, Kenosha and Milwaukee, Wisconsin; and

Chicago, Rockford, and Bensenville, Illinois, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Soliciting employees to abandon the Unions and threatening them that facilities would be closed if they fail to do so.

(b) Refusing to bargain with Local 43 and Local 200, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representatives of the employees in the appropriate units.

(c) Unilaterally closing facilities without notice to or bargaining with the Unions about the decision and its effects, and terminating employees, while continuing to service customers by utilizing alter egos.

(d) Discharging or otherwise discriminating against employees for engaging in activities on behalf of a labor organization or for engaging in activity protected by Section 7 of the Act.

(e) Unilaterally abrogating contracts with the Unions.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with Local 43 as the exclusive bargaining representative of all the employees in the appropriate

unit concerning the decision to close the Kenosha terminal and the effects on employees.

(b) As to all Kenosha employees who have not been hired by Gertsen Trucking Company, offer them immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, at the facility performing the work previously performed at Kenosha, discharging, if necessary, any employee hired to perform such work.

(c) Make whole all Kenosha employees for any loss of earnings and other benefits they may have suffered by reason of the discrimination practiced against them, in the manner set forth in the section of this Decision and Order entitled ''The Remedy.''

(d) Reopen the Milwaukee facility and restore the unit work previously performed there.

(e) Recall the terminated Milwaukee employees and offer them immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of earnings and other benefits they may have suffered by reason of the discrimination practiced against them, in the manner set forth in the section of this Decision and Order entitled ''The Remedy.''

(f) Upon request, bargain collectively with Local 200 as the exclusive bargaining representative of all the employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, including bargaining over the decision to close the Milwaukee facility and the effects on employees.

(g) Make whole the Kenosha and Milwaukee employees in the appropriate units by transmitting the fringe benefit fund payments required by the collective-bargaining agreements, and by reimbursing employees for any expenses ensuing from Respondents' unlawful failure to make such required payments, in the manner set forth in the section of this Decision and Order entitled ''The Remedy.''

(h) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(i) Post at their Milwaukee, Wisconsin, and Chicago, Illinois, places of business copies of the attached notice marked ''Appendix.''[7] Copies of said notice, on forms provided by the

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[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

Regional Director for Region 30, after being duly signed by Respondents' representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(j) Furnish signed copies of said notice to Gersten for posting at the Kenosha facility (Gersten willing) and furnish the Regional Office with the last known names and addresses for all unit employees at the Milwaukee and Kenosha facilities on the respective days they were closed so that copies of said notice may be sent to those employees.

(k) Notify the Regional Director for Region 30, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. December 16, 1982

John R. Van de Water, Chairman

Howard Jenkins, Jr., Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT solicit employees to abandon the Unions and threaten them that facilities would be closed if they fail to do so.

WE WILL NOT refuse to bargain with Local 43 and Local 200, International Brotherhood of America of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representatives of the employees in the appropriate units, as set forth below:

> All truckdrivers, terminal employees, and group leaders who have been covered by collective-bargaining agreements between us and the Unions at our Kenosha and Milwaukee facilities.

WE WILL NOT unilaterally close facilities without notice to or bargaining with the Unions about the decision and its effects, and terminate employees, while continuing to service our customers by utilizing alter egos.

WE WILL NOT discharge or otherwise discriminate against employees for engaging in activities on behalf of a labor organization or for engaging in activity protected by Section 7 of the Act.

WE WILL NOT unilaterally abrogate contracts with the Unions.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL, upon request, bargain with Local 43 as the exclusive bargaining representative of all the employees in the appropriate unit concerning the decision to close the Kenosha terminal and the effects on employees.

As to all Kenosha employees who have not been hired by Gertsen Trucking Company, WE WILL offer them immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice

to their seniority and other rights and privileges, at the facility performing the work previously performed at Kenosha, discharging, if necessary, any employees hired to perform such work.

WE WILL make whole all Kenosha employees for any loss of earnings and other benefits they may have suffered by reason of the discrimination practiced against them, with interest.

WE WILL reopen the Milwaukee facility and restore the unit work previously performed there.

WE WILL recall the terminated Milwaukee employees and offer them immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and WE WILL make them whole for any loss of earnings and other benefits they may have suffered by reason of the discrimination practiced against them, with interest.

WE WILL, upon request, bargain collectively with Local 200 as the exclusive bargaining representative of all the employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, including bargaining over the decision to close the Milwaukee facility and the effects on employees.

WE WILL make whole the Kenosha and Milwaukee employees in the appropriate units by transmitting the fringe benefit fund payments required by the

collective-bargaining agreements, and by reimbursing employees for any expenses ensuing from our unlawful failure to make such required payments, with interest.

F. LANDON CARTAGE CO. (CARTAGE CO.) LANDON TRUCK LEASING LIMITED (LEASING LIMITED), LANDON TRUCK LEASING COMPANY (LEASING CO.), F. LANDON TRUCKING COMPANY (TRUCKING CO.), METEOR LINES LIMITED (METEOR), A & M AGRICULTURAL COOPERATIVE d/b/a A & M FARM LINES (A & M), ALTER EGOS, SINGLE AND/OR SUCCESSOR EMPLOYERS

(Employer)

Dated ---------- By ----------

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Commerce Building, Suite 230, 744 North Fourth Street, Milwaukee, Wisconsin 53203, Telephone 414--291--3866.